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Attorneys for Plaintiff Northwest Environmental Advocates

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST ENVIRONMENTAL
ADVOCATES, an Oregon non-profit
corporation,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, an agency of the United States of
America,

Defendant.

Case No. 2:19-cv-1051

COMPLAINT

INTRODUCTION

1. This is an action against the U.S. Environmental Protect Agency (“EPA”) for violations of the Freedom of Information Act (“FOIA” or “Act”), 5 U.S.C. § 552, *as amended*. Under the judicial review provisions of both the FOIA and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, plaintiff Northwest Environmental Advocates (“NWEA”) seeks relief regarding three FOIA requests it submitted to EPA in January and March 2019, as well as relief regarding an administrative FOIA appeal it submitted to EPA in May 2019. NWEA also seeks relief for EPA’s pattern and practice of violating the FOIA’s decision deadlines.

2. The FOIA requires federal agencies to disclose records in a timely manner to any person upon request unless the information falls within one of nine narrow disclosure exemptions in the Act. *See* 5 U.S.C. § 552(a)(3)(A), (b). Federal agencies generally must determine within twenty business days whether requested records are exempt from withholding and, if they are not, the agency must promptly disclose the records to the requester. 5 U.S.C. § 552(a)(6)(A)(i); *id.* at § 552(a)(3)(A), (a)(6)(C)(i).

3. NWEA seeks the imposition of court-ordered deadlines for EPA to respond to the FOIA requests and administrative appeal at issue in this lawsuit because EPA's unlawful delays violate the FOIA and impair NWEA's advocacy work; EPA has been taking extraordinary amounts of time to respond to other FOIA requests; and NWEA cannot accept additional unlawful delays regarding the FOIA requests and appeal at issue in this case.

4. EPA has failed to make and communicate the agency's final determinations in response to NWEA's FOIA requests, failed to make and communicate the disclosure determinations required by the FOIA for the responsive records in its possession, and failed to act within applicable deadlines. EPA is unlawfully withholding documents sought by NWEA, documents to which NWEA is entitled and for which no valid disclosure exemptions apply. NWEA therefore seeks declarations that EPA has violated the FOIA and an order from the Court compelling EPA to make the required determinations and disclosures by a date certain. NWEA also seeks a court order preventing EPA from violating the FOIA's decision deadlines in the future when it responds to NWEA's FOIA requests.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. §§ 1331 (federal question), 1346 (United States as defendant), 2201 (declaratory judgment), and 2202 (further relief).

7. Plaintiff NORTHWEST ENVIRONMENTAL ADVOCATES is a non-profit entity organized under Section 501(c)(3) of the Internal Revenue Code, with its principal place of business in Portland, Oregon. Founded in 1969, NWEA has actively worked for over 30 years to protect and restore water quality and fish habitat in the Northwest. NWEA employs community organizing, strategic partnerships, public records requests, information sharing, advocacy with administrative agencies, expert analysis, lobbying, and litigation to ensure better implementation and enforcement of the laws that preserve the natural environment and protect water quality. NWEA also provides advice and information to many environmental organizations across the country. It has repeatedly proven itself a leader in protecting water quality and endangered aquatic species, and actively participates in many state and federal agency actions that affect water quality in the Pacific Northwest and across the nation.

9. The above-described interests of NWEA and its members have been, are being, and, unless the relief prayed for herein is granted, will continue to be adversely affected by EPA's disregard of its statutory duties under the FOIA and by the unlawful harm that results.

1 EPA's failure to fully implement the FOIA injures the interests of NWEA and its members and
2 the relief requested in this lawsuit can redress these injuries. These harms are traceable to EPA's
3 conduct and would be remedied by the relief sought in this action.

4 10. Defendant the UNITED STATES ENVIRONMENTAL PROTECTION
5 AGENCY is an agency of the executive branch of the United States government subject to the
6 FOIA pursuant to 5 U.S.C. § 552(f). EPA is in possession or control of public records requested
7 and sought by NWEA.
8

9 STATUTORY BACKGROUND

10 11. The purpose of the FOIA is "to open agency action to the light of public scru-
11 tiny." *U.S. DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 772 (1989) (quot-
12 ing *Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976)). "Congress believed that this phi-
13 losophy, put into practice, would help 'ensure an informed citizenry, vital to the functioning of a
14 democratic society.'" *U.S. DOJ v. Tax Analysts*, 492 U.S. 136, 142 (1989) (quoting *NLRB v.*
15 *Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)).
16

17 12. The FOIA requires federal agencies to make records in their possession or control
18 available to the public upon request unless one of the FOIA's nine specific exemptions applies. 5
19 U.S.C. § 552(a), (b)(1)–(9). Federal agencies bear the burden of demonstrating to a court that any
20 withholding of responsive records is consistent with the FOIA. 5 U.S.C. § 552(a)(4)(B). Even if
21 an agency meets its burden to prove that a responsive record contains information that is exempt
22 from disclosure, the agency must nevertheless disclose any non-exempt information if it can be
23 segregated from the exempt materials. 5 U.S.C. § 552(b).
24

25 13. To ensure a requester receives all requested documents, the FOIA requires agen-
26 cies to conduct a search that is reasonably calculated to uncover all records responsive to the re-
27 quest. 5 U.S.C. § 552(a)(3)(C)–(D).
28

1 14. The FOIA imposes strict and rigorous deadlines on federal agencies. The FOIA
2 requires a federal agency that receives a FOIA request to determine whether the requested rec-
3 ords are exempt from disclosure under 5 U.S.C. § 552(b) and to communicate that determination
4 to the requester within twenty business days. *Id.* § 552(a)(6)(A)(i). If the agency determines the
5 requested records are exempt from public disclosure, the agency must also communicate to the
6 requester that they have a right to appeal that determination. *Id.* If the agency determines the rec-
7 ords are not exempt from public disclosure, the agency is required to make the requested records
8 “promptly available” to the requester. *Id.* § 552(a)(3)(A), (a)(6)(C)(i).

10 15. Congress set forth the circumstances in which federal agencies may obtain more
11 time to make the determination required by 5 U.S.C. § 552(a)(6)(A)(i). In two very limited cir-
12 cumstances the agency may *toll* the twenty-day deadline for making that determination. 5 U.S.C.
13 § 552(a)(6)(A)(ii). Additionally, the agency may *extend* the twenty-day deadline for making that
14 determination by providing a written notice to the requester that sets forth the “unusual circum-
15 stances” that justify a 10-day deadline extension and the date on which the agency expects to
16 make the determination. 5 U.S.C. § 552(a)(6)(B)(ii). The statute includes a specific definition of
17 the term “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B)(iii).

19 16. In addition to imposing response deadlines, the FOIA also requires federal agen-
20 cies to communicate with requesters about the status of the agencies’ efforts to respond to a
21 FOIA request. Specifically, the FOIA requires agencies to assign tracking numbers to each re-
22 quest that will take longer than ten days to process; to provide that tracking number to each per-
23 son making such a request; and to establish a telephone line or internet service that provides in-
24 formation about the status of a request to the requester, including an estimated date by which the
25 agency will complete its work. *Id.* § 552(a)(7).

27 17. A U.S. District Court has jurisdiction “to enjoin the agency from withholding
28

1 agency records and to order the production of any agency records improperly withheld from the
2 complainant.”

3 18. Agency action under the FOIA is also subject to judicial review under the APA.
4 *Or. Natural Desert Ass’n v. Gutierrez*, 409 F. Supp. 2d 1237, 1248 (D. Or. 2006) (violation of
5 the FOIA’s decision deadline constitutes agency action that is not in accordance with the law).
6 Under the judicial review provisions of the APA, district courts are authorized to compel agency
7 action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1). District courts must also
8 set aside any agency action found to be arbitrary, capricious, an abuse of discretion, not in ac-
9 cordance with law, or made without observation of required procedures. *Id.* § 706(2).
10

11 STATEMENT OF FACTS

12 19. On or around January 26, 2017, NWEA submitted a FOIA request to EPA seek-
13 ing documents regarding EPA’s and the Washington State Department of Ecology’s regulatory
14 actions under the Clean Water Act pertaining to nutrient pollution in Puget Sound. EPA received
15 NWEA’s January 26, 2017 FOIA request and assigned the request reference number EPA-R10-
16 2017-003319.
17

18 20. For NWEA’s January 26, 2017 FOIA request, EPA did not make the determina-
19 tions required by the FOIA within the twenty-day deadline imposed by the Act. Instead, over the
20 twenty-seven months following EPA’s receipt of that FOIA request, EPA repeatedly provided
21 NWEA with estimated completion dates only to extend the estimated completion date further as
22 the date drew near or after the agency missed it. By letter dated April 10, 2019, EPA finally sent
23 NWEA its final response to NWEA’s January 26, 2017 FOIA request.
24

25 21. On May 9, 2019, NWEA filed an administrative FOIA appeal of EPA’s response
26 to NWEA’s January 26, 2017 FOIA request (request number EPA-R10-2017-003319) because
27 EPA’s response and production of documents was incomplete and inconsistent with the FOIA.
28

1 EPA assigned NWEA's May 9, 2019 administrative FOIA appeal reference number EPA-HQ-
2 2019-005645. EPA then missed the 20-day deadline for responding to NWEA's administrative
3 appeal.

4 22. The deadline for EPA to issue the final determinations required by 5 U.S.C.
5 § 552(a)(6)(A)(ii) for NWEA's administrative FOIA appeal has passed. As of the date this action
6 was filed, EPA had not provided NWEA with the determinations required by 5 U.S.C.
7 § 552(a)(6)(A)(ii) for NWEA's May 9, 2019 administrative FOIA appeal. As of the date this ac-
8 tion was filed, EPA had not provided NWEA with an estimated date by which EPA would make
9 the final determinations required by 5 U.S.C. § 552(a)(6)(A)(ii) for NWEA's administrative
10 FOIA appeal.
11

12 23. On or around January 11, 2019, NWEA submitted a FOIA request to EPA seek-
13 ing documents related to certain Clean Water Act regulatory actions pertaining to nutrient pollu-
14 tion in Puget Sound and certain tributaries to Puget Sound. EPA received that FOIA request and
15 assigned it reference number EPA-R10-2019-002758. By letter dated February 26, 2019, EPA
16 informed NWEA that it estimated EPA would complete its response to NWEA's 2019 Nutrients
17 FOIA by October 4, 2019. EPA subsequently disclosed fourteen records to NWEA.
18

19 24. Also on or around January 11, 2019, NWEA submitted a FOIA request to EPA
20 seeking documents regarding polybrominated diphenyl ethers (PBDE) in Puget Sound and else-
21 where. EPA received that FOIA request and assigned it reference number EPA-HQ-2019-
22 002757. EPA subsequently assigned that FOIA a different reference number, EPA-R10-2019-
23 002757, after concluding EPA's Region 10 office in Seattle, Washington would respond to that
24 request. By letter dated February 26, 2019, EPA informed NWEA that it estimated EPA would
25 complete its response to NWEA's 2019 PBDE FOIA by October 4, 2019.
26

27 25. On or around March 27, 2019, NWEA submitted a FOIA request to EPA seeking
28

1 documents regarding Clean Water Act section 319 funding to Oregon. EPA received that FOIA
2 request and ultimately assigned it reference number EPA-R10-2019-004570. By letter dated
3 April 8, 2019, EPA informed NWEA that it estimated EPA would complete its response to
4 NWEA's March 27, 2019 FOIA in April 2020.

5
6 26. The deadline for EPA to issue the final determinations required by 5 U.S.C.
7 § 552(a)(6)(A)(i) for NWEA's January and March 2019 FOIA requests has passed. As of the
8 date this action was filed, EPA had not provided NWEA with the determinations required by 5
9 U.S.C. § 552(a)(6)(A)(i) for those requests.

10 27. As of the date NWEA filed this lawsuit, EPA had failed to provide NWEA with
11 sufficient and valid written notices setting forth unusual circumstances that would justify exten-
12 sion of the deadlines set forth in 5 U.S.C. § 552(a)(6)(A)(i) for NWEA's January and March
13 2019 FOIA requests. The amount of time EPA estimated it would take to complete EPA's re-
14 sponses to NWEA's January and March 2019 FOIA responses is not reasonably necessary to the
15 proper processing of those FOIA requests. Before establishing its estimated completion dates,
16 EPA failed to provide NWEA with an opportunity to arrange an alternative time frame for pro-
17 cessing NWEA's January and March 2019 FOIA requests or modified requests. On information
18 and belief, EPA did not search for responsive records before providing NWEA with estimated
19 completion dates in response to NWEA's January and March 2019 FOIA requests so EPA did
20 not have sufficient factual bases for the estimated completion dates it provided to NWEA. On in-
21 formation and belief, EPA did not have any factual basis for the estimated completion dates it
22 provided to NWEA in response to NWEA's January and March 2019 FOIA requests.

23
24 28. As of the date NWEA filed this lawsuit, EPA had failed to provide NWEA with
25 records, or reasonably segregable portions of records, that are responsive to NWEA's May 9,
26 2019 administrative FOIA appeal. As of the date NWEA filed this lawsuit, EPA had failed to
27
28

1 provide NWEA with records, or reasonably segregable portions of the records, that are respon-
2 sive to NWEA's January and March 2019 FOIA requests.

3 29. As of the date NWEA filed this lawsuit, EPA had failed to make promptly availa-
4 ble to NWEA records, or reasonably segregable portions of records, that are responsive to
5 NWEA's May 9, 2019 administrative FOIA appeal. As of the date NWEA filed this lawsuit,
6 EPA had failed to make promptly available to NWEA records, or reasonably segregable portions
7 of records, that are responsive to NWEA's January and March 2019 FOIA requests to EPA.
8

9 30. EPA is unlawfully withholding from NWEA non-exempt documents that are re-
10 sponsive to NWEA's May 9, 2019 administrative FOIA appeal. EPA is unlawfully withholding
11 from NWEA non-exempt documents that are responsive to NWEA's January and March 2019
12 FOIA requests to EPA. None of FOIA's nine exemptions to mandatory disclosure apply to all the
13 documents EPA is currently withholding from NWEA. EPA has no legal basis for withholding
14 all the records that NWEA sought via the FOIA requests.
15

16 31. As of the date this action was filed, EPA had constructively denied NWEA's May
17 9, 2019 administrative FOIA appeal. As of the date this action was filed, EPA had constructively
18 denied NWEA's January and March 2019 FOIA requests to EPA.

19 32. Prior to filing this action NWEA fully exhausted all administrative remedies re-
20 quired by the FOIA. 5 U.S.C. § 552(a)(6)(A), (a)(6)(C).
21

22 33. NWEA has been required to expend costs and to obtain the services of a law firm
23 to prosecute this action.

24 34. The filing of this lawsuit was necessary to compel EPA to comply with a written
25 deadline by which it would make the determinations required by 5 U.S.C. § 552(a)(6)(A)(ii) for
26 NWEA's May 9, 2019 administrative FOIA appeal. The filing of this lawsuit was necessary to
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1 compel EPA to comply with a written deadline by which it would make the determinations re-
2 quired by 5 U.S.C. § 552(a)(6)(A)(i) for NWEA's January and March 2019 FOIA requests to
3 EPA.

4 35. The filing of this lawsuit was necessary to compel EPA to disclose the non-ex-
5 empt documents that are responsive to NWEA's May 9, 2019 administrative FOIA appeal. The
6 filing of this lawsuit was necessary to compel EPA to disclose the non-exempt documents that
7 are responsive to NWEA's January and March 2019 FOIA requests to EPA.
8

9 36. EPA could have made the determinations required by 5 U.S.C. § 552(a)(6)(A)(i)
10 for NWEA's January and March 2019 FOIA requests to EPA before NWEA filed this lawsuit.
11 EPA could have disclosed the records responsive to NWEA's January and March 2019 FOIA re-
12 quests to EPA before NWEA filed this lawsuit.
13

14 37. EPA could have made the determinations required by 5 U.S.C. § 552(a)(6)(A)(ii)
15 for NWEA's May 9, 2019 administrative FOIA appeal to EPA before NWEA filed this lawsuit.
16 EPA could have disclosed the records responsive to NWEA's May 9, 2019 administrative FOIA
17 appeal to EPA before NWEA filed this lawsuit.

18 38. NWEA claims for relief in this Complaint are not insubstantial.

19 39. The delays at issue in this case result from a predictable agency workload of
20 FOIA requests or administrative FOIA appeals. EPA has not made reasonable progress in reduc-
21 ing its backlog of pending requests and/or appeals.
22

23 40. The circumstances surrounding the withholdings raise questions regarding
24 whether agency personnel acted arbitrarily or capriciously with respect to the withholdings at is-
25 sue in this case.

26 41. Based on the nature of NWEA's professional activities, NWEA will continue to
27 employ the FOIA's provisions in information requests to EPA in the foreseeable future.
28

NWEA's professional activities will be adversely affected if EPA is allowed to continue violating the FOIA's disclosure provisions. Unless enjoined and made subject to a declaration of NWEA's legal rights by this Court, EPA will continue to violate the rights of NWEA to receive public records under the FOIA.

CAUSES OF ACTION

CLAIM 1

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT IN RESPONDING TO NWEA'S MAY 9, 2019 ADMINISTRATIVE APPEAL: VIOLATION OF THE DECISION DEADLINES IN THE FOIA

42. NWEA hereby incorporates by reference the allegations in the preceding paragraphs.

43. NWEA has a statutory right to have EPA process NWEA's May 9, 2019 administrative FOIA appeal in a manner that complies with the FOIA. EPA violated NWEA's rights in this regard when EPA unlawfully delayed its response to NWEA's May 9, 2019 administrative FOIA appeal beyond the deadlines imposed by the FOIA.

44. EPA violated and is violating the FOIA by failing to respond to NWEA's May 9, 2019 administrative FOIA appeal by the deadline set forth in 5 U.S.C. § 552(a)(6)(A)(ii).

CLAIM 2

VIOLATION OF THE FREEDOM OF INFORMATION ACT: UNLAWFUL CONSTRUCTIVE DENIAL/UNLAWFUL WITHHOLDING

45. NWEA hereby incorporates by reference the allegations in the preceding paragraphs.

46. NWEA has a statutory right to the records, or portions of records, it seeks. There is no legal basis for EPA to withhold the records responsive to NWEA's January 26, 2017 FOIA request and May 9, 2019 administrative FOIA appeal.

47. EPA has violated and is violating NWEA's rights by unlawfully withholding non-exempt documents responsive to NWEA's January 26, 2017 FOIA request and May 9, 2019 administrative FOIA appeal. EPA's actions in response to NWEA's May 9, 2019 administrative FOIA appeal constitute constructive and/or unlawful denials of NWEA's appeal.

CLAIM 3

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT IN RESPONDING TO NWEA'S JANUARY AND MARCH 2019 FOIA REQUESTS: VIOLATION OF THE DECISION DEADLINES IN THE FOIA

48. NWEA hereby incorporates by reference the allegations in the preceding paragraphs.

49. NWEA has a statutory right to have EPA process its FOIA requests in a manner that complies with the FOIA. EPA violated NWEA's rights in this regard when EPA unlawfully delayed its responses to NWEA's January and March 2019 FOIA requests beyond the deadline imposed by the FOIA.

50. EPA violated and is violating the FOIA by failing to make decisions to disclose or withhold documents and information subject to the NWEA's January and March 2019 FOIA requests by the deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

51. EPA violated and is violating the FOIA by failing to make the records subject to NWEA's January and March 2019 FOIA requests promptly available to NWEA.

CLAIM 4

VIOLATION OF THE FREEDOM OF INFORMATION ACT: UNLAWFUL CONSTRUCTIVE DENIAL/UNLAWFUL WITHHOLDING

52. NWEA hereby incorporates by reference the allegations in the preceding paragraphs.

53. NWEA has a statutory right to the records, or portions of records, it seeks. There

1 is no legal basis for EPA to withhold records responsive to the FOIA requests at issue in this
2 lawsuit.

3 54. EPA has violated and is violating NWEA's rights by unlawfully withholding non-
4 exempt documents responsive to NWEA's January and March 2019 FOIA requests. EPA's ac-
5 tions in response to NWEA's January and March 2019 FOIA requests constitute constructive
6 and/or unlawful denials of NWEA's January and March 2019 FOIA requests.
7

8 CLAIM 5

9 VIOLATIONS OF THE FREEDOM OF INFORMATION ACT:
10 FAILURE TO CONDUCT A REASONABLE SEARCH FOR RESPONSIVE RECORDS

11 55. NWEA hereby incorporates by reference the allegations in the preceding para-
12 graphs.

13 56. The FOIA requires EPA to conduct a search that is reasonably calculated to un-
14 cover all records responsive to a FOIA request. 5 U.S.C. § 552(a)(3)(C)–(D).

15 57. EPA violated the FOIA by failing to conduct a search that was reasonably calcu-
16 lated to uncover all documents, information and records, including letters, meeting notes, email
17 correspondence, and memoranda responsive to NWEA's January 26, 2017 FOIA request and
18 May 9, 2019 administrative FOIA appeal.

19 58. On information and belief, EPA violated the FOIA by failing to conduct a search
20 that was reasonably calculated to uncover all documents, information and records, including let-
21 ters, meeting notes, email correspondence, and memoranda responsive to NWEA's January and
22 March 2019 FOIA requests, including by failing to search for responsive records before provid-
23 ing NWEA with estimated completion dates.
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26 //

27 //
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CLAIM 6

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT:
ENGAGING IN A PATTERN OR PRACTICE OF UNLAWFUL CONDUCT

59. Plaintiff hereby incorporates by reference all of the preceding paragraphs.

60. EPA has engaged in a pattern or practice of violating the FOIA in responding to NWEA's FOIA requests. EPA's policies, practices, or standard operating procedures for responding to FOIA requests have resulted in violations of NWEA's rights as alleged above. Additionally, EPA's policies, practices, or standard operating procedures for responding to FOIA requests are likely to result in future violations of the FOIA that will harm NWEA and its members because NWEA is likely to continue seeking public documents from EPA.

61. Even if EPA fully discloses all documents responsive to the FOIA requests at issue in this lawsuit, NWEA is entitled to a declaration that EPA's actions violated the FOIA and to an injunction barring EPA from violating the FOIA in the future when responding to NWEA's FOIA requests. Whether made under the FOIA or the APA, declaratory or injunctive relief will clarify and settle the legal relations at issue and afford relief from the uncertainty and controversy giving rise to these proceedings. *Natural Res. Def. Council v. EPA*, 966 F.2d 1292, 1299 (9th Cir. 1992).

CLAIM 7

(In the alternative to Claims 1 through 6)

VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT:
FAILURE TO COMPLY WITH THE FOIA IN RESPONDING TO
NWEA'S ADMINISTRATIVE APPEAL AND FOIA REQUESTS

62. NWEA hereby incorporates by reference the allegations in the preceding paragraphs.

63. To the extent relief is unavailable under the judicial review provisions of the

FOIA, this Court can provide relief to NWEA under the APA for each and every FOIA violation by EPA. Where EPA has failed to act in violation of the FOIA, as alleged herein, EPA's failures to act are final agency actions unlawfully withheld or unreasonably delayed that this Court can compel under the APA, 5 U.S.C. § 706(1). Additionally, where EPA has affirmatively acted in violation of the FOIA, as alleged herein, its actions are final agency actions that are arbitrary, capricious, an abuse of discretion, not based on substantial evidence in the record, not in accordance with the law, or otherwise in violation of the APA, 5 U.S.C. § 706(2), because among other things those actions do not comply with the FOIA or EPA's regulations or policies.

64. NWEA is entitled to relief under the APA and to costs of litigation and reasonable attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, NWEA respectfully requests that the Court:

- A. Declare that EPA has violated the FOIA for the reasons set forth above;
- B. Order EPA to comply immediately with the FOIA by providing NWEA with the required determinations and non-exempt public records subject to NWEA's January 26, 2017 FOIA request and May 9, 2019 administrative FOIA appeal;
- C. Order EPA to comply immediately with the FOIA by providing NWEA with the required determinations and non-exempt public records subject to NWEA's January and March 2019 FOIA requests;
- D. Order EPA to comply immediately with the FOIA by conducting a reasonable search for all non-exempt public records subject to NWEA's January 26, 2017 FOIA request and May 9, 2019 administrative FOIA appeal;
- E. Order EPA to comply immediately with the FOIA by conducting a reasonable search for all non-exempt public records subject to January and March 2019 FOIA requests;

1 F. Declare that EPA has engaged in an unlawful pattern or practice of violating the
2 FOIA when responding to NWEA's FOIA requests;

3 G. Enjoin EPA from continuing that unlawful pattern or practice of violating the
4 FOIA when responding to NWEA's FOIA requests for documents;

5 H. Declare that NWEA is the prevailing party and/or substantially prevailing party in
6 this matter; that the position of the government in this action was not substantially justified; and
7 that there are no special circumstances that make an award of costs and reasonable attorneys'
8 fees to NWEA unjust;

9 I. Award NWEA its reasonable attorneys' fees and litigation costs pursuant to
10 5 U.S.C. § 552(a)(4)(E) and/or award NWEA its reasonable fees, expenses, costs, and disburse-
11 ments, including attorneys' fees associated with this litigation, under the Equal Access to Justice
12 Act, 28 U.S.C. § 2412; and
13

14 J. Grant NWEA such additional relief as the Court may deem just or proper.
15

16 DATED this 8th day of July 2019.

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